



ASX listing rules update

October/November 2019

Kevin Lewis
ASX Chief Compliance Officer

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Background



The genesis of the consultation

Continually improving our rules, guidance and processes

2012

Good fame and character requirements introduced for new listings

Major rewrite of GN 12 to regulate back door listings

New LR 7.1A allowing extra 10% placement capacity

2013

Major rewrite of GN 8 to improve understanding of and compliance with continuous disclosure rules

Major rewrite of mining, oil and gas rules and JORC Code

2014

3rd edition of CGPR and related listing rule changes

New long term suspended entity policy introduced via GN 33

Modernised rights issue timetables

GN 1 tightened re acceptable structure, minimum free float and spread for emerging market issuers

2015

NZ foreign exempt entity rule changes

10% minimum free float applied via GN 1

Right to appeal listing admission and waiver decisions to ASX Appeals Tribunal removed

2016

New pre-vetting process for all listings

20% minimum free float introduced via GN 1

New policy re suspension of entities announcing back doors listings in GN 12

Interim scoping study guide

2017

Major changes to admission rules

Rule amendments to regulate reverse takeovers

New “show cause” process to remove recidivist entities from the official list

2018

Listings Compliance restructured to create separate Review and Investigations and Investment Products teams

Major revamp of AQUA product admission documentation and compliance policies and procedures

2019

4th edition of CGPR

New guidance on cryptocurrency-related activities

Tightened requirements for voluntary de-listings and long term suspended entity policy in GN 33

Changes to AQUA rules to enhance compliance framework



Let's fix the Appendix 3B (September 2017)

The consultation



The consultation

- Consultation paper *Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules* released 28/11/18:
 - ❑ improving market disclosures and other integrity measures
 - ❑ making the LR simpler and easier to follow
 - ❑ efficiency measures
 - ❑ updating timetables for corporate actions
 - ❑ enhancing ASX's powers to monitor and enforce compliance
 - ❑ correcting gaps or errors in the LR
 - ❑ new/updated guidance notes
- Submissions closed 1/3/19
- 48 submissions received (9 confidential)



The consultation response



The consultation response

- Released 10/10/19:
 - ❑ detailed consultation response
 - ❑ 171 pages of rule changes
 - ❑ 5 amended listing rule appendix forms
 - ❑ 6 new and 12 updated guidance notes
- Documents (and these slides) available:
<https://www.asx.com.au/regulation/public-consultations.htm>
- Subject to receipt of necessary regulatory approvals, rule and guidance changes take effect on 1/12/19, other than:
 - ❑ quarterly reporting – effective for quarter ending 31 March 2020
 - ❑ LR compliance course – effective for new appointments on or after 1 July 2020



A blurred city street scene with a prominent clock tower in the background and a blue diagonal overlay on the left side. The clock tower is a large, ornate, light-colored building with a tall spire and a flag on top. The street is busy with people walking, and there are modern glass buildings in the background. The blue diagonal overlay is on the left side of the image, containing the text.

An overview of the changes to the ASX listing rules

Improved quarterly reporting



- Quarterly activity reports for App 4C reporters (LR 4.7C)
- Enhanced quarterly activity disclosures for both App 4C and 5B reporters:
 - if quarter in a period covered by “use of funds” statement or expenditure program in listing prospectus, PDS or info memo, must include a comparison of:
 - ❖ entity’s actual expenditure on individual items in statement/program since date of admission or re-admission, vs
 - ❖ estimated expenditure on those items in statement/program,and an explanation of any material variance
 - a description of, and an explanation for, any payments to, or to an associate of, a related party included in App 4C or 5B for the quarter

Improved quarterly reporting (cont.)



- LR 4.7B and 5.5 amended to require quarterly cash flow report to be lodged “*immediately the information is available for release to the market*” – that is, when it has been properly compiled, verified and approved
- Important changes to contents of App 4C and 5B quarterly cash flow reports:
 - ❑ Edits to items 2, 3 and 4 of App 4C and items 1, 2 and 3 of App 5B
 - ❑ Items 6 (payments to directors and associates) and 7 (payments to related entities and associates) of App 4C and 5B combined into a single item 6 (payments to related parties and associates)
 - ❑ Item 8 (now item 7) of App 4C and 5B (financing facilities) expanded and clarified
 - ❑ Item 9 (now item 8) of App 4C and 5B no longer requires disclosure of estimated cash outflows for next quarter

Improved quarterly reporting (cont.)



- ❑ Instead, new item 8 asks entity to calculate number of quarters' funding available based on last quarter's cash burn rate and, if less than two quarters:
 - ❖ does entity expect it will continue to have the current level of net operating cash flows for the time being and, if not, why not?
 - ❖ has entity taken any steps, or does it propose to take any steps, to raise further cash to fund its operations and, if so, what are those steps and how likely does it believe that they will be successful?
 - ❖ does entity expect to be able to continue its operations and to meet its business objectives and, if so, on what basis?
- ❑ Item 10 of App 4C and 5B (acquisitions or disposals of businesses/tenements) moved to quarterly activity report

Improved quarterly reporting (cont.)



- New guidance in GN 23 that ASX expects an entity's auditor will inspect:
 - ❑ first two quarterly cash flow reports when it is auditing/reviewing entity's half year financial statements
 - ❑ all four quarterly cash flow reports when it is auditing entity's full year financial statements

as part of its work plan for the audit/review and, if auditor identifies any material errors or omissions in the quarterly cash flow reports, to communicate those to the entity's board

- If entity's board receives such a communication from its auditor, ASX expects it to make an announcement to the market highlighting and correcting errors or omissions

Improved LIC/LIT disclosures



- New definition of “NTA backing” in LR 19.12
- Disclosure of month end NTA backing required “*immediately it is available for release to the market*” – that is, when it has been properly compiled, verified and approved – and in any event not later than 14 days after month end (LR 4.12)
- Securities will be immediately suspended if 14 day deadline missed (LR 17.5)
- Annual report must disclose:
 - ❑ level 1, level 2 and level 3 inputs used to value investments under AASB 13
 - ❑ NTA backing of quoted securities at beginning and end of reporting period and an explanation of any change over that period (LR 4.10.20)
- Proposed changes to LR 4.10.20(a) (annual disclosure of portfolio composition) postponed for further consultation

Other disclosure/integrity measures



- Closing date for receipt of director nominations (LR 3.13.1):

“If the entity is not an externally managed trust and directors may be elected at a meeting of security holders, the entity must tell ASX the date of the meeting and the closing date for the receipt of nominations from persons wishing to be considered for election as a director, at least 5 business days before the closing date for the receipt of such nominations. However, the failure to give such notice does not invalidate the meeting or the election of any director at the meeting.”

Note: The entity may satisfy this obligation by giving to ASX a calendar of key dates which shows the date of the meeting and the closing date for the receipt of director nominations, as well as other key dates (such as the dates for its half yearly and annual results presentations and dividend payment dates).”

Other disclosure/integrity measures (cont.)



- Enhanced and standardised disclosure of voting results at meetings of security holders (LR 3.13.2)
- Sample template for disclosure of voting results available at:
<https://www.asx.com.au/regulation/compliance/compliance-downloads.htm>
- More consistent disclosure of underwriting arrangements:
 - ❑ name of underwriter
 - ❑ extent of underwriting
 - ❑ fee or commission payable
 - ❑ summary of significant events that could lead to termination(LR 3.10.9 (underwritten DRPs), 3.11.3 (underwritten exercises of options), 7.2 exception 2 and 10.12 exception 2 (underwritten pro rata offers), and App 3B)

Other disclosure/integrity measures (cont.)

- “Good fame and character” requirement for new listings extended to non-director CEOs and CFOs (LR 1.1 condition 20)
- From 1/7/20, persons responsible for communication with ASX on LR issues will be required to undertake and obtain an acceptable pass mark in an approved LR compliance course (LR 1.1 condition 13 and LR 12.6)
- LR 7.1A extra 10% placement capacity limited to issues for cash (LR 7.1A.3)
- Specific disclosure requirements for LR 10.1 resolutions (LR 10.5)
- Employee incentive scheme securities not to be voted on LR resolutions unless certain conditions met (LR 14.10)



Other disclosure/integrity measures (cont.)



- Market announcements must:
 - ❑ include, or be sent with a covering letter that includes, entity's name, address and corporate logo (unless a form prescribed by the LR or an Australian law is used)
 - ❑ be dated
 - ❑ identify title of body, or name and title of officer, who authorised document to be given to ASX
 - ❑ if a LR 3.1 announcement, include name, title and contact details of person who security holders or other interested parties can contact if they have any queries (LR 15.1)

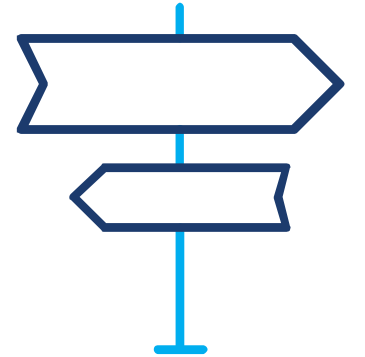
Other disclosure/integrity measures (cont.)



- Distribution schedule in annual report must include number of security holders and total percentage of securities held by holders in each of the following categories:
 - ❑ 1 - 1,000
 - ❑ 1,001 - 5,000
 - ❑ 5,001, - 10,000
 - ❑ 10,001 - 100,000
 - ❑ 100,001 and over (LR 4.10.7)
- Substantial market integrity measures in updated GN 1, 12 and 33 and new GN 11, 13, 21, 24, 25 and 35 (discussed later)

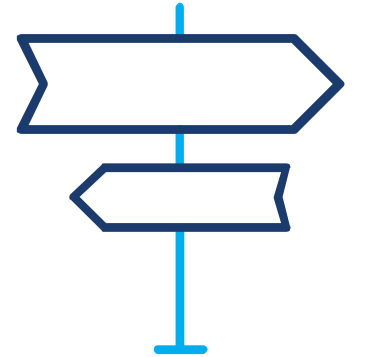
Making the LR simpler and easier to follow

- Clearer rules for announcing issues of securities – must notify ASX:
 - ❑ immediately via an App 3B of a proposed issue of:
 - ❖ equity securities (other than an issue under a DRP or employee incentive scheme (EIS) or as a result of conversion of convertible securities)
 - ❖ debt securities intended to be quoted on ASX (LR 3.10.3)
 - ❑ within 5 business days of issue of equity securities under an EIS (LR 3.10.3A)
 - ❑ within 10 business days of conversion of convertible securities (LR 3.10.3B)
 - ❑ within 5 business days if unquoted partly paid equity securities become fully paid securities (LR 3.10.3C)
 - ❑ in last 3 cases, notification is via an App 2A (if resulting securities to be quoted) or App 3G (if resulting securities unquoted)



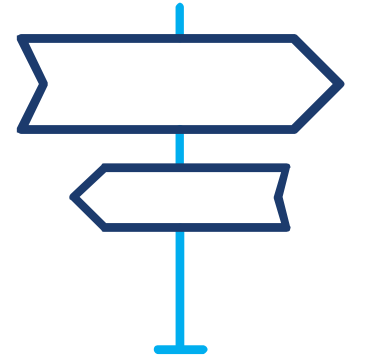
Making the LR simpler and easier to follow (cont.)

- LR 2.7 and 2.8: must apply for quotation of securities (via the new App 2A):
 - ❑ if offered under a DD or PDS, within 7 days of date of DD or PDS
 - ❑ if offered or issued in a transaction for which there is a timetable in App 6A or 7A, when specified in that timetable
 - ❑ if unquoted convertible securities converted into quoted securities, within 10 business days after conversion
 - ❑ if unquoted partly paid securities become quoted fully paid securities, within 5 business days after being fully paid up
 - ❑ if restricted securities – within 5 business days after the end of escrow period
 - ❑ if issued under EIS – within 5 business days of issue or, if subject to restrictions on transfer, within 5 business days after end of restrictions
 - ❑ otherwise on or before the date specified by ASX

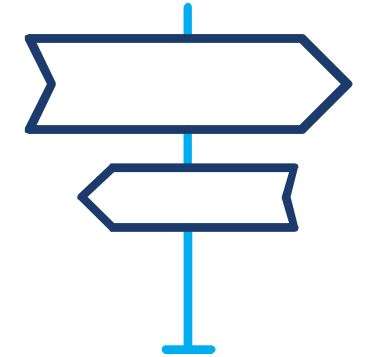


Making the LR simpler and easier to follow (cont.)

- Simplified working capital requirements for assets test listings:
 - ❑ new definition of “working capital” in LR 19.12
 - ❑ can no longer include first 12 months of projected revenue (LR 1.3.3)
- Improvements to LR 7.1A:
 - ❑ LR 3.10.5A(a) deleted – post-issue notification of dilutionary impact no longer required
 - ❑ LR 3.10.5A(b) – (d) disclosures moved to App 3B smart form
 - ❑ LR 7.1A.3(b) – 5 trading day deadline to issue securities without having to re-calibrate price extended to 10 trading days
 - ❑ new LR 7.1B.4 and 7.1B.5 – clearer rules on how market is informed an issue is made under LR 7.1A 10% placement capacity rather than LR 7.1 15% placement capacity

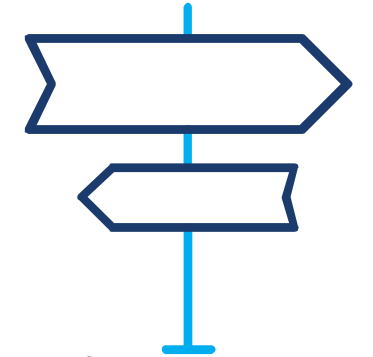


Making the LR simpler and easier to follow (cont.)



- New exceptions to LR 10.1 covering acquisitions or disposals of substantial assets:
 - ❑ between entities within the same stapled group (LR 10.3(c))
 - ❑ under an agreement to acquire or dispose of a substantial asset where:
 - ❖ agreement was entered into before listing and was properly disclosed in listing prospectus, PDS or info memo, or
 - ❖ entity otherwise complied with LR when it entered into agreement (LR 10.3(e))
 - ❑ pursuant to an agreement that is conditional on the holders of ordinary securities approving the transaction under LR 10.1 before the agreement is given effect to (LR 10.3(f))

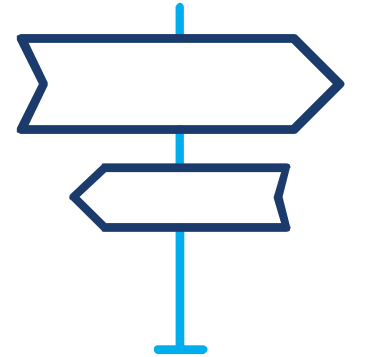
Making the LR simpler and easier to follow (cont.)



- New provisions in LR 10.11 requiring security holder approval for an issue or agreement to issue equity securities to:
 - ❑ a person who is, or was at any time in 6 months before issue or agreement, a substantial (30%+) holder in the entity (LR 10.11.2)
 - ❑ a person who is, or was at any time in 6 months before the issue or agreement, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity pursuant to a relevant agreement which gives them a right or expectation to do so (LR 10.11.3)
 - ❑ an associate of a person referred to in LR 10.11.1 to 10.11.3 (LR 10.11.4) instead of relying on exercise of ASX discretion under existing LR 10.11.2 (now LR 10.11.5)
- Note flow-on consequences for LR 6.18 “strategic investor” waivers (see GN 25)

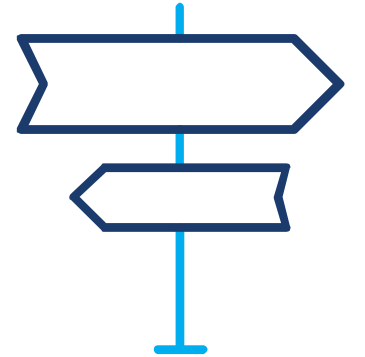
Making the LR simpler and easier to follow (cont.)

- Rationalised lists of equity issues that can be made without security holder approval under LR 7.2, 7.6, 7.9 and 10.12
 - ❑ new LR 7.2 exception 15 – grant of options or other rights to acquire equity securities under an employee incentive scheme, where securities to be acquired on exercise of options or in satisfaction of rights are required to be purchased on-market (as referred to in LR 10.16(b))
 - ❑ added equivalent exceptions in LR 7.6 to those in LR 7.9
 - ❑ new LR 7.9 exceptions 7 and 8 – issues made after bidder tells entity in writing that it is no longer making, or proposing to make, a takeover offer and issues made with approval of bidder
 - ❑ new LR 10.12 exception 6 – issue of securities approved under item 7 of s611 of Corporations Act



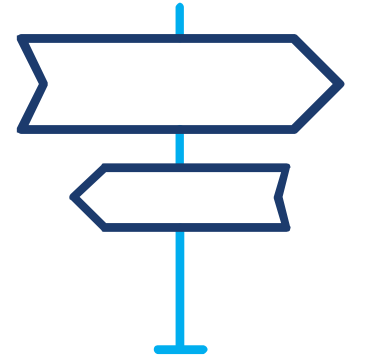
Making the LR simpler and easier to follow (cont.)

- Rationalised notice of meeting (NOM) requirements for resolutions under LR 7.1, 7.1A, 7.4, 10.1, 10.11 and 10.14
- Merged NOM requirements in LR 10.15 and 10.15A for issues to directors and associates under an employee incentive scheme
- New exception in LR 10.16(c) for issues of equity securities pursuant to exercise of options or in satisfaction of rights granted to directors or associates under an employee incentive scheme, where options or rights were issued:
 - ❑ before listing and properly disclosed the listing prospectus, PDS or info memo, or
 - ❑ after listing with approval under LR 10.14
- Rationalised table of voting exclusions in LR 14.11.1 for LR resolutions generally

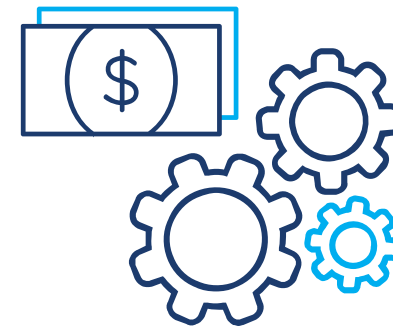


Making the LR simpler and easier to follow (cont.)

- Clearer rules around announcement of dividends and interest payments (LR 3.21 and 3.22)
- Improved reporting of CDIs on issue by dual listed foreign issuers (LR 4.11 and new App 4A)
- Six comprehensive new guidance notes:
 - ❑ GN 11 *Restricted Securities and Voluntary Escrow*
 - ❑ GN 13 *Spin-outs of Major Assets*
 - ❑ GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*
 - ❑ GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*
 - ❑ GN 25 *Issues of Equity Securities to Persons in a Position of Influence*
 - ❑ GN 35 *Security Holder Resolutions*

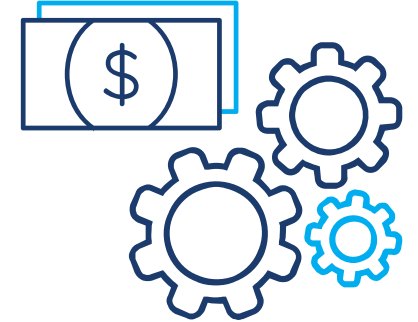


Escrow efficiency measures



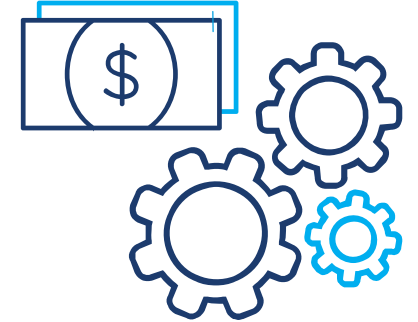
- Two-tier escrow regime:
 - ❑ significant holders (related parties, promoters, substantial (10%+) holders, vendors of classified assets (where 10 or fewer) and their associates) must execute App 9A “restriction deeds”
 - ❑ other holders can be given App 9C “restriction notices”
 - ❑ where restriction deeds required, “controllers” must also execute deed
- Entity must have LR 15.12 provisions in constitution:
 - ❑ This applies even where escrow is applied wholly via restriction deeds rather than restriction notices
 - ❑ Especially relevant for entities contemplating a back door listing or a LR 10.7 transaction (acquisition of classified assets from a 10.1 party) where consideration must be restricted securities

Escrow efficiency measures (cont.)



- Expanded definition of “controller” captures trust relationships (eg nominees and custodians), as well as chains of upstream entities
- Where restricted securities are held in a trust relationship, restriction deed must be executed by holder and by beneficiary (currently LR 9.1.4 only requires beneficiary to sign)
- Carve-outs allowing other controllers not to execute restriction deeds in current LR 9.1.4 deleted and replaced by ASX discretion/guidance in s10.9 of GN 11
- New LR 9.5 and 9.6 - entity no longer has to apply for:
 - ❑ ASX approval to allow holder of restricted securities to participate in takeover or merger scheme
 - ❑ ASX waiver to allow transfer of restricted securities with no change of beneficial ownership

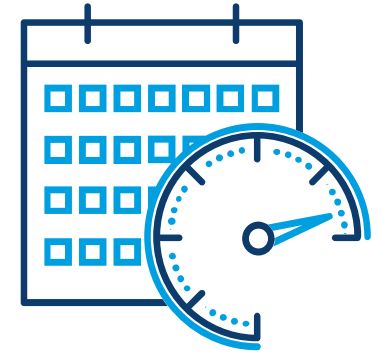
Other efficiency measures



- Profit test listings can notify ASX of continuing profits under LR 1.2.6 in listing prospectus/PDS/information memorandum
- 9 standard waivers built into LR
- Standard forms removed from Appendices and made available in editable form on ASX Online
- Simplified agreements for admission and quotation in new App 1A, 1B and 1C
- Improvements to existing corporate action forms in App 3A.1 to 3A.6
- New smart forms in ASX Online for notifying issues and seeking quotation – updated App 3B and new App 2A, 3G and 4A
- Preview of new/updated forms, summary of changes and training material available in new training environment during November 2019 (ASX will provide further details via *Listed@ASX Compliance Update*)

Updated timetables for corporate actions

- Standard 5 business day period for securities to be issued and application for quotation to be lodged with ASX for issues under DRPs, bonus issues, equal access buybacks, SPPs and securities issued to satisfy interest payments
- 10 business days allowed for conversion of convertible securities
- Flexible interest payments dates for debt securities
- New timetables for splits/consolidations, cash returns of capital and returns of capital by way of in specie distribution of securities in another entity
- Timetable for court-approved reorganisations of capital replaced by timetable for mergers or takeovers effected via a scheme of arrangement

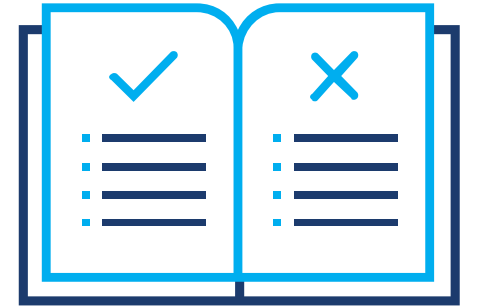


Enhancing ASX powers to monitor and enforce rules

- Class waivers
- Power to impose conditions on no-action letters
- New LR 18.5A confirming powers and discretions under LR may be exercised in ASX's absolute discretion and subject to conditions
- ASX's power under LR 18.7 to ask for information, documents or explanations to confirm compliance with LR extended, including power to require information etc to be verified under oath
- Detailed list of examples of requirements ASX may impose to ensure compliance with LR under LR 18.8
- New LR 18.8A giving ASX power to censure for egregious LR breaches



Correcting gaps or errors in the LR



- Gaps in time limits to apply for quotation of securities filled
- Flaw in definition of variable “A” in LR 7.1 and 7.1A.2 corrected
- LR 7.4 and 7.5 amended to allow security holders to ratify an agreement to issue securities (as well as an actual issue)
- LR 10.1 and 10.3 amended to deal more appropriately with agreements to acquire or dispose of substantial assets
- New LR 19.11B and 19.11C stating how the LR apply to trusts and stapled groups
- Improved definitions of “associate”, “child entity”, “control”, “debt security”, “equity security” and “related party” in LR 19.12
- New definitions of “internally managed trust”, “externally managed trust”, “stapled group”, “substantial (10%+) holder” and “substantial (30%+) holder” in LR 19.12

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An overview of the changes in ASX's guidance

GN 1 *Applying for Admission – ASX Listings*

- Disclosure and escrow measures to deal with financial advisers extracting excessive equity-based fees and perquisites on new listings
- Changes reflecting new escrow regime and good fame and character requirements
- New section highlighting ASX's practice of publishing details of a listing application on the ASX website shortly after it has been lodged with ASX
- Two new grounds added on which ASX may reject a listing application:
 - ❑ applicant has entered into an agreement or transaction that, if it had been entered into after listing, would have required approval under LR 10.1, 10.11 or 10.14 and ASX has concerns about the commerciality of the agreement or transaction
 - ❑ ASX has had prior unacceptable dealings with applicant's CEO or CFO



GN 1 Applying for Admission – ASX Listings (cont.)



- New example of unacceptable structure and operations: *“where the composition of the applicant’s board is otherwise not appropriate for a listed entity”*, with examples footnoted
- Footnoted ASX’s general view that it is not appropriate for an officer or employee of the lead manager or broker to an entity’s listing to be a director of the entity, given the clear conflicts it creates
- Added commentary that:
“Where ASX has removed an entity from the official list or censured an entity for breaching the listing rules, any officer of the entity who in ASX’s opinion was culpably responsible for the breach or breaches is likely to have some difficulty in satisfying ASX that they are of good fame and character.”

GN 1 Applying for Admission – ASX Listings (cont.)

- Highlighted that ASX’s decision to accept or reject a listing application is final, there is no right of appeal and:

“ASX’s absolute discretion to reject a listing application exists to safeguard the reputation and integrity of the ASX market. It allows ASX to exclude from its market any entity where ASX has concerns, for any reason, about:

- *the suitability of the entity for admission as a listed entity;*
- *the suitability of the entity’s securities for quotation on a public securities market; or*
- *the calibre of the promoters or advisers involved in the application.”*



GN 11 *Restricted Securities and Voluntary Escrow*



- ASX's escrow requirements for “restricted securities”
- How ASX escrow is applied to different holdings
- Cash formula relief
- When ASX will permit transfers of restricted securities (note changes to s9.3 of GN 11 since consultation version)
- Waivers commonly granted in relation to ASX escrow
- The difference between ASX escrow and voluntary escrow
- How the LR apply to voluntary escrow
- Notification obligations regarding restricted securities and securities subject to voluntary escrow
- Annexure A – worked examples of ASX escrow and cash formula relief

GN 12 *Significant Changes to Activities*

- Disclosure and escrow measures to deal with financial advisers extracting excessive equity-based fees and perquisites on back door listings
 - Presentational change to s3.2 (the main circumstances in which ASX will apply LR 11.1.2 and 11.1.3) swapping cases (3) and (4):
 - ❑ case (3) – entity has disposed of or abandoned its main undertaking and is proposing to acquire a new main undertaking
 - ❑ case (4) – entity proposing an acquisition that is not a back door listing but will involve a major change to the nature of its main undertaking
- with a change in policy that ASX will invariably exercise its discretion to apply LR 11.1.2 and 11.1.3 to case (3)
- Guidance on “pre-emptive loans”



GN 12 *Significant Changes to Activities* (cont.)

- Substantial changes post consultation to ss2.8 – 2.11 around process for announcing a transaction involving a significant change to the nature or scale of an entity's activities including, if LR 11.1.3 applies:
 - ❑ entity should not announce transaction until ASX has reviewed draft announcement and indicated it has no objections
 - ❑ entity must apply ASAP for in-principle advice on its suitability for re-admission to the official list (LR 1.1 condition 1 and LR 1.19) and for any waivers or rulings required in relation to the transaction
 - ❑ ASX will not do any further work to progress the transaction until the entity has obtained favourable rulings on those applications



GN 12 *Significant Changes to Activities* (cont.)

- Important changes post consultation to s4.7 of GN 12:
 - ❑ ASX used to allow an entity that had disposed of its main undertaking to remain trading on ASX for 6 months from the date of the disposal to afford it the time to find a new business or commence a winding up
 - ❑ ASX has shortened this to 6 months from the date of the agreement to dispose of its main undertaking
 - ❑ If entity initiates the processes to be wound up, ASX will now suspend trading as soon as ASX is notified that the winding up process has been initiated
 - ❑ ASX will terminate the entity's admission to the official list once the entity has been formally placed into liquidation



GN 13 *Spin-outs of Major Assets*

- The prohibition in LR 11.4 against spinning out major assets
- What is a “major asset”?
- The exclusion in LR 11.4.1(a) for pro rata and other fair offers, issues and transfers
- The matters ASX takes into account in determining whether a non-pro rata offer, issue or transfer is fair in all the circumstances
- The exclusion in LR 11.4.1(b) for transactions approved by security holders
- The information to be included in a notice of meeting (NOM) proposing a resolution under LR 11.4.1(b)
- Notification obligations for transactions that trigger LR 11.4



GN 17 *Waivers and In-Principle Advice*

- Deleted 9 standard waivers:
 - ❑ LR 6.24 “out-of-the-money” options → LR 5.3
 - ❑ LR 7.1 for SPP under ASIC Class Order 09/425 → LR 7.2 exception 15
 - ❑ LR 7.1 for issues to underwriters of DRPs → LR 7.2 exception 4
 - ❑ LR 7.9 for issue of shares during takeovers → LR 7.9 exception 7
 - ❑ LR 7.9 for issues made with consent of the bidders → LR 7.9 exception 8
 - ❑ LR 7.39 for auctions of forfeited shares → amended LR 7.39
 - ❑ LR 7.40 for substantially out-of-the money options → Appendix 6A
 - ❑ LR 9.7 for transfer of restricted securities → LR 9.6
 - ❑ LR 14.7 & LR 14.11 not to comply with voting exclusion statement for nominee holders → LR 14.11



GN 17 *Waivers and In-Principle Advice* (cont.)

- Added 2 new standard waivers
 - ❑ LR 10.13.5 waiver to permit administrators to issue securities outside the one month time frame, but at the same time as other securities are to be issued under the prospectus for a recapitalisation
 - ❑ “Supersize” waiver to allow entities to take advantage of the expanded placement capacity created by a simultaneous placement and accelerated offer



GN 19 *Performance Shares*

- Two new examples of unacceptable milestones for performance shares:
 - ❑ performance shares proposed to be issued to a lead manager/ financial adviser by an entity proposing to list where the performance milestone was tied to the post-listing market price of the ordinary shares of the entity
 - ❑ performance shares proposed to be issued to persons who had provided seed capital to an entity proposing to list where the performance milestone was tied to the post-listing market price of the ordinary shares of the entity
- Likely to be further updates to capture learnings from current ASX enforcement matter



GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*



- The 15% limit on placements of equity securities without security holder approval in LR 7.1
- The additional 10% placement capacity available to an eligible entity under LR 7.1A and the conditions the entity must satisfy to access it
- The exceptions to LR 7.1 and 7.1A in LR 7.2
- Ratification of issues of, or agreements to issue, equity securities under LR 7.4
- The requirements for a NOM proposing a resolution under LR 7.1, 7.1A or 7.4
- The obligation to notify ASX immediately of a proposed issue of securities under LR 3.10.3

GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules (cont.)*



- The constraints on issues of equity securities in LR 7.6 and 7.9
- The powers ASX may exercise if an entity issues equity securities in breach of LR Chapter 7
- Annexure A – worked examples of how to calculate placement capacity under LR 7.1 and 7.1A.2
- Annexures B and C – new work sheets to calculate placement capacity under LR 7.1 and 7.1A.2
- If entity makes an issue of equity securities relying on its placement capacity under LR 7.1 or 7.1A.2, App 3B or 2A for the issue will prompt entity to lodge a completed worksheet with its ASX listings adviser

GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules (cont.)*



- Convertible securities are counted as the maximum number of fully paid ordinary securities into which they can be converted on the date the LR 7.1 or 7.1A calculation is being performed – a change in approach by ASX
- Convertible securities that:
 - ❑ convert by reference to a variable other than the market price of the underlying security or the value of a foreign currency
 - ❑ convert into other convertible securities rather than fully paid ordinary securities, or
 - ❑ specify that the right of conversion cannot be exercised if it would require security holder approval under the LR,are all likely to raise concerns under LR 6.1

GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules (cont.)*

- Where chapter 7 requires security holder approval to an issue of equity securities, the names of persons issued securities (rather than the basis upon which they were identified or selected) must be disclosed if that information is material to security holders
- This is likely to be the case where they are:
 - ❑ a related party of the entity
 - ❑ a member of key management personnel
 - ❑ a substantial holder in the entity
 - ❑ an adviser to the entity, or
 - ❑ an associate of any of the above, and their holding is > 1% of issued capital.



GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*

- The requirement in LR 10.1 for an entity's security holders to approve an acquisition or disposal of a substantial asset involving a person in a position of influence
- The exceptions to LR 10.1 in LR 10.3
- The application of LR 10.1 to put and call options
- The application of LR 10.1 to takeovers and mergers
- The requirements for a NOM proposing a resolution to approve an acquisition or disposal of a substantial asset under LR 10.1
- The powers ASX may exercise if an entity acquires or disposes of a substantial asset in breach of the LR 10.1



GN 25 *Issues of Equity Securities to Persons in a Position of Influence*

- The requirement in LR 10.11 for an entity's security holders to approve an issue of equity securities to a person in a position of influence
- The exceptions to LR 10.11 in LR 10.12
- The requirement in LR 10.14 for an entity's security holders to approve an issue of equity securities under an employee incentive scheme to a director, an associate of a director or other closely connected party
- The requirements for a NOM proposing a resolution to approve an issue of equity securities under LR 10.11 or 10.14
- The powers ASX may exercise if an entity issues equity securities in breach of LR 10.11 or 10.14



GN 33 *Removal of Entities from the ASX Official List*



- Update released 15/4/19
- New procedures for applying for voluntary removal - request trading halt and provide draft release to ASX for review before announcing proposed de-listing
- Where securities are not readily able to be traded on another exchange, special resolution required for security holders to approve the entity's removal request
- Seeking to avoid ss674 and 675 disclosure obligations added to list of unacceptable reasons why an entity might ask to be removed from official list
- Additional grounds when ASX will impose a voting exclusion:
 - ❑ ss674 and 675 disclosure obligations will cease to apply
 - ❑ a security holder is likely to obtain a material advantage or benefit not available to other holders

GN 33 *Removal of Entities from the ASX Official List* (cont.)



- Disclosure required in market announcement and NOM whether entity will continue to be an unlisted disclosing entity under s675 and remedies available to objecting shareholders for oppression and “unacceptable circumstances”
- Amended policy on automatic removal of long-term suspended entities - from 3/2/20, ASX will automatically remove an entity from the official list if it has:
 - ❑ been suspended from quotation for a continuous period of 2 years (currently 3 years), or
 - ❑ failed to lodge any of the financial statements or other documents referred to LR 17.5 for more than 12 monthswhichever occurs first
- Further minor updates on 1/12/19

New GN 35 *Security Holder Resolutions*



- Type and form of resolution required under the LR
- Information to be included in a NOM
- Requirement to give a draft NOM with LR resolutions to ASX for review
- Voting exclusions and the steps an entity should take to identify persons excluded from voting
- Conducting a properly managed and recorded voting process – note guidance that all LR resolutions must be decided by poll not on a show of hands
- ASX's power to appoint scrutineers
- Supplementary disclosures
- Notifying ASX of the results of voting
- Stale resolutions

Other changes to Guidance Notes

- GN 20 *ASX Online* – minor changes to standard ASX Online agreement
- Consequential changes to:
 - ❑ GN 4 *Foreign Entities Listing on ASX*
 - ❑ GN 5 *CHESS Depository Interests (CDIs)*
 - ❑ GN 23 *Quarterly Reports*
 - ❑ GN 29 *Applying for Admission – ASX Debt Listings*
 - ❑ GN 30 *Notifying an Issue of Securities and Applying for Their Quotation*
 - ❑ GN 34 *Naming Conventions for Debt and Hybrid Securities*



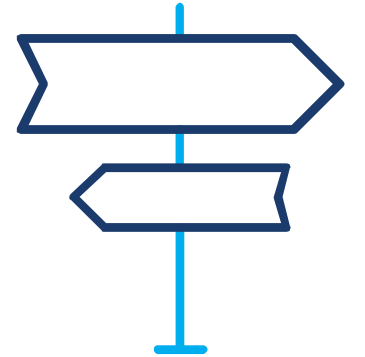
Hints on how to approach the changes



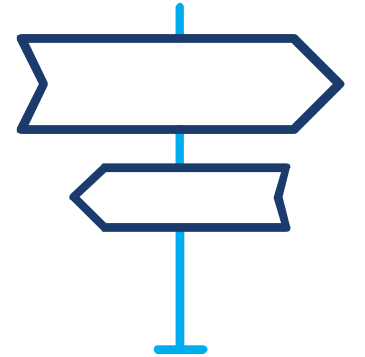
Market announcements

Before 1/12/19, check your templates for market announcements:

- include, or contemplate a cover letter that includes, entity's name, address and corporate logo
- are dated
- identify title of body, or name and title of officer, who authorised document to be given to ASX
- if a LR 3.1 announcement, include name, title and contact details of person who security holders or other interested parties can contact if they have any queries (LR 15.1)



Quarterly reporters



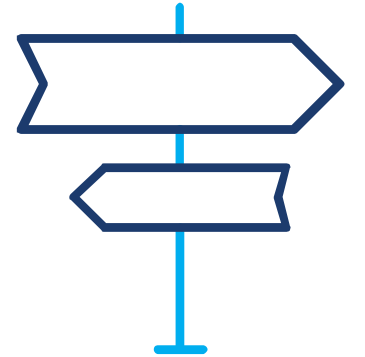
Before your quarterly report for 31/3/20:

- read changes to LR 4.7B - 4.7C or 5.1 - 5.5 (as applicable) and GN 23
- create/update template for quarterly activity report
- update quarterly cash flow report template for new App 4C/5B
- note questions in item 8 – if entity has less than 2 quarters funding:
 - ❑ does the entity expect that it will continue to have the current level of net operating cash flows for the time being and, if not, why not?
 - ❑ has the entity taken any steps, or does it propose to take any steps, to raise further cash to fund its operations and, if so, what are those steps and how likely does it believe that they will be successful?
 - ❑ does the entity expect to be able to continue its operations and to meet its business objectives and, if so, on what basis?

Issuing new securities

Before you contemplate an issue of securities:

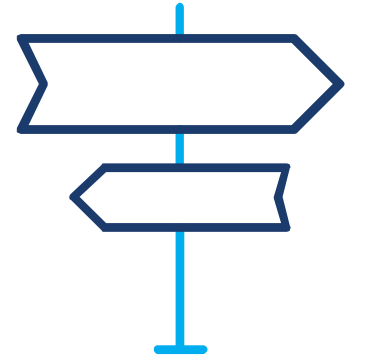
- read LR 2.7, 2.8, 3.10.3 – 3.10.3C and GN 21 and 30
- familiarise yourself with new App 2A, 3B, 3G and (if dual listed with CDIs) 4A (available shortly in ASX training environment – watch for *Listed@ASX Compliance Update*)
- if issue is outside LR 7.2 exceptions, familiarise yourself with new worksheets in GN 21 confirming issue is within LR 7.1/7.1A placement capacity
- if issue is to a LR 10.11 or 10.14 party, read GN 25
- if issue is underwritten, make sure you include required disclosures:
 - ❑ name of underwriter
 - ❑ extent of underwriting
 - ❑ fee or commission payable
 - ❑ summary of significant events that could lead to termination



Security holder meetings

Before you draft your next NOM:

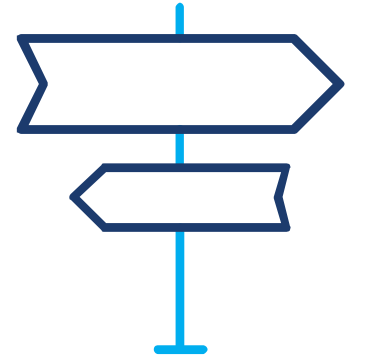
- read revised table of voting exclusions in LR 14.11.1
- if your NOM includes a:
 - ❑ LR 7.1, 7.1A or 7.4 resolution, read GN 21
 - ❑ LR 10.1 resolution, read GN 24
 - ❑ LR 10.11 or 10.14 resolution, read GN 25
 - ❑ LR 11.1.2 or 11.2 resolution, read GN 12
 - ❑ LR 11.4.1(b) resolution, read GN 13
 - ❑ resolution for approval to be removed from the official list, read GN 33
- consider whether you should introduce LR 15.12 escrow provisions into your constitution



Security holder meetings (cont.)

Before you hold your next general meeting:

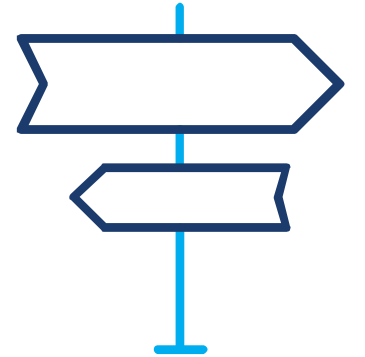
- read GN 35
- note ASX's position that all LR resolutions must be decided by poll rather than a show of hands
- update template for disclosure of voting results to reflect changes to LR 3.13.2 – sample available at:
<https://www.asx.com.au/regulation/compliance/compliance-downloads.htm>
- If it's your AGM:
 - ❑ Make sure you disclose closing date for receipt of director nominations (LR 3.13.1) – can be done in a calendar of key events
 - ❑ Note copy of CEO's AGM speech (as well as Chair's) must be lodged before meeting (LR 3.13.3)



New listings

Before you embark on a new IPO or back door listing:

- read changes to LR 1.1 listing conditions
- read updated GN 1
- if a back door listing, also read updated GN 12
- if an assets test listing:
 - ❑ read revised working capital test in LR 1.3.5 and new definition of “working capital” in LR 19.12
 - ❑ read new escrow provisions for “restricted securities” in LR Chapter 9, LR 15.12 and Appendices 9A, 9B and 9C and GN 11
 - ❑ make sure constitution includes LR 15.12 requirements
- If a profit test listing, read changes to LR 1.2.6

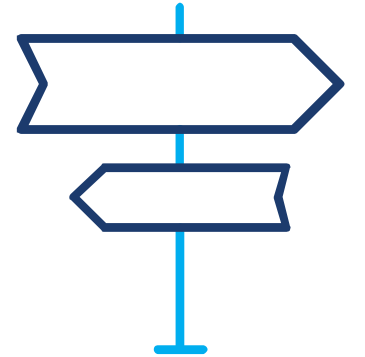


New listings (cont.)

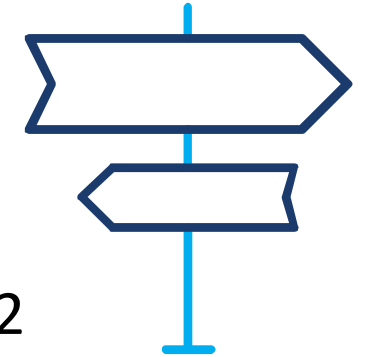
- Advisers - update your templates for the new:
 - ❑ App 1A application for listing
 - ❑ information form and checklist
 - ❑ “good fame and character” statutory declaration
 - ❑ ASX Online agreement
 - ❑ restriction deed and restriction notice for escrowed securities
 - ❑ LR 15.12 constitutional provisions

Note new forms must be used for all listing applications lodged on or after 1/12/19

- Remember for listing applications lodged on or after 1/7/20, persons responsible for communication with ASX in relation to LR matters must have completed approved education course and examination covering LR compliance matters (LR 1.1 condition 13)



LICs/LITs



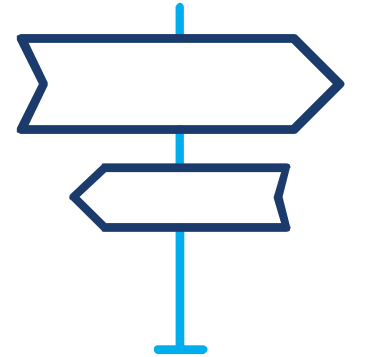
Before 1/12/19:

- Read LR 4.10.20, 4.12, 17.5 and new definition of “NTA backing” in LR 19.12
- Check calculation of NTA backing conforms to new definition
- Update reporting protocol to announce NTA backing when “available for release to the market” (LR 4.12)
- Note securities will be immediately suspended if you miss 14 day deadline after month end for announcing NTA backing (LR 17.5)
- Ensure next annual report has new information required by LR 4.10.20:
 - ❑ level 1, level 2 and level 3 inputs used to value investments under AASB 13
 - ❑ NTA backing of quoted securities at beginning and end of reporting period and an explanation of any change over that period.

Other matters

- In your next annual report, remember to update distribution schedule in report to include number of security holders AND total percentage of securities held by holders in each of the following categories:
 - ❑ 1 - 1,000
 - ❑ 1,001 - 5,000
 - ❑ 5,001, - 10,000
 - ❑ 10,001 - 100,000
 - ❑ 100,001 and over (LR 4.10.7)

- Remember persons responsible for communication with ASX in relation to LR matters appointed on or after 1/7/20 must have completed approved education course and examination covering LR compliance matters (LR 12.6)



Thank you
Any questions?